

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**EIGHT MILE STYLE, LLC; MARTIN
AFFILIATED, LLC,**

Plaintiffs,

v.

**SPOTIFY USA INC.;
THE HARRY FOX AGENCY LLC,**

Defendants.

CIVIL CASE NO.: 19-CV-00736

JUDGE ALETA A. TRAUGER

JURY DEMAND

SPOTIFY USA INC.,

Third-Party Plaintiff,

v.

**KOBALT MUSIC PUBLISHING
AMERICA, INC.**

Third-Party Defendant.

ORAL ARGUMENT REQUESTED

**DEFENDANT THE HARRY FOX AGENCY LLC'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendant The Harry Fox Agency LLC ("HFA") respectfully moves this Court to grant its Motion for Summary Judgment (the "Motion"). Incorporated into this Motion and submitted contemporaneously herewith under seal are HFA's (1) Memorandum of Law; (2) Statements of Undisputed Material Facts, pursuant to Local Rule 56.01(b); and (3) supporting Exhibits, (collectively the "Supporting Documents").

As set forth herein and in the Supporting Documents, HFA is entitled to summary judgment because there is no genuine dispute of material fact that HFA did not induce or materially contribute to Spotify's alleged direct infringement of the EMS Compositions, and it is entitled to summary judgment as a matter of law.

First, there is no genuine dispute of material fact that Plaintiffs were not deceived by any action of HFA because: (1) Plaintiffs did not review any NOIs issued by HFA until Plaintiffs were preparing for this litigation; (2) NOIs and royalty statements provided by HFA on Spotify's behalf did not impliedly represent that a valid mechanical license was in place; and (3) Plaintiffs had sufficient knowledge and information to discover the purported direct infringement, but took no action to do so.

Second, HFA is also entitled to summary judgment because there is no genuine dispute of material fact that the services rendered by HFA to Spotify were not sufficiently related to Spotify's alleged infringement.

Finally, to the extent that Spotify is found to have not engaged in direct infringement, HFA cannot be liable for contributory infringement, and, even if Plaintiffs are able to demonstrate infringement, any damages must be reduced to exclude instances of infringement which occurred outside of the applicable three-year statute of limitations.

For these reasons, and as set forth more fully in the Supporting Documents, HFA respectfully moves the Court to grant summary judgment in its favor and dismiss Plaintiffs' claims of contributory copyright infringement.

Respectfully submitted,

**SHACKELFORD BOWEN
MCKINLEY & NORTON, LLP**

/s/ Jay S. Bowen

Jay S. Bowen (TN Bar No. 2649)
Lauren Kilgore (TN Bar No. 30219)
Jacob T. Clabo (TN Bar No. 36760)
1 Music Circle South, Suite 300
Nashville, TN 37203
P: (615) 329-4440
F: (615) 329-4485
jbowen@shackelford.law
lkilgore@shackelford.law
jclabo@shackelford.law

BRYAN CAVE LEIGHTON PAISNER LLP

Chris M. LaRocco (admitted pro hac vice)
Matias Gallego-Manzano (admitted pro hac vice)
1290 Avenue of the Americas
New York, New York 10104
(212) 541-2000
chris.larocco@bclplaw.com
matias.gallego-manzano@bclplaw.com

Attorneys for The Harry Fox Agency LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of *DEFENDANT THE HARRY FOX AGENCY LLC'S MOTION FOR SUMMARY JUDGMENT* was filed electronically with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all parties and counsel of record by operation of the Court's CM/ECF system, and via electronic and/or U.S. mail, postage prepaid, on October 13, 2023, to:

Andrew Hunt Davis
Richard S. Busch
David M. Niemierzycki
Max D. Fabricant
KING & BALLOW
26 Century Blvd., Suite NT700
Nashville, TN 37214
Telephone: (615) 259-3456
rbusch@kingballow.com
ddavis@kingballow.com
dniemierzycki@kingballow.com

Kathleen M. Sullivan (*pro hac vice*)
Carey R. Ramos (*pro hac vice*)
Cory Struble (*pro hac vice*)
Rachel E. Epstein (*pro hac vice*)
Mario O. Gazzola (*pro hac vice*)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 895-2500
kathleensullivan@quinnemanuel.com
careyramos@quinnemanuel.com
corystruble@quinnemanuel.com
rachelepstein@quinnemanuel.com
mariogazzola@quinnemanuel.com

Thomas C. Rubin (*pro hac vice*)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
600 University Street, Suite 2800
Seattle, WA 98101
Telephone: (206) 905-7000
tomrubin@quinnemanuel.com

Matthew D. Ingber (*pro hac vice*)
Rory K. Schneider (*pro hac vice*)
Allison Aviki (*pro hac vice*)
Alina Artunian (*pro hac vice*)
MAYER BROWN, LLP
1221 Avenue of the Americas
New York, NY 10020
Telephone: (212) 506-2500
mingber@mayerbrown.com
rschneider@mayerbrown.com
aaviki@mayerbrown.com
aartunian@mayerbrown.com

James F. Blumstein
Of Counsel
Vanderbilt Legal Clinic
Vanderbilt University
131 21st Avenue South
Nashville, TN 37203
Telephone: (615) 343-3939
James.blumstein@vanderbilt.edu

Allison L. Stillman (*pro hac vice*)
LATHAM & WATKINS, LLP
1271 Avenue of the Americas
New York, NY 10020
Telephone: (212) 906-1200
Alli.stillman@lw.com

Andrew J. Pincus (*pro hac vice*)
Archis A. Parasharami
MAYER BROWN, LLP
1999 K Street, NW
Washington, DC 20006
Telephone: (202) 263-3000
apincus@mayerbrown.com
aparasharami@mayerbrown.com

Aubrey B. Harwell, III
NEAL & HARWELL, PLC
1201 Demonbreun Street, Suite 1000
Nashville, TN 37203
Telephone: (615) 244-1713
tharwell@nealharwell.com

Marie T. Scott
FISHER & PHILLIPS, LP
3310 West End Avenue, Suite 500
Nashville, TN 37203
Telephone: (615) 488-2904
mtscott@fisherphillips.com

Brian D. Caplan
Robert W. Clarida
Julie B. Wlodinguer
REITLER KAILAS & ROSENBLATT, LLC
885 Third Avenue, 20th Floor
New York, NY 20022
Telephone: (212) 209-3050
bcaplan@reitlerlaw.com
rclarida@reitlerlaw.com
jwlodinguer@reitlerlaw.com

Chris M. LaRocco
Matias Gallego-Manzano
BRYAN CAVE LEIGHTON PAISNER, LLP
1290 Avenue of the Americas
New York, NY 10020
Telephone: (212) 541-2000
Chris.larocco@bclplaw.com
Matias.gallego-manzano@bclplaw.com

Karl M. Braun
HALL BOOTH SMITH, P.C.
Fifth Third Center
424 Church Street, Suite 2950
Nashville, TN 37219
Telephone: (615) 313-9913
kbraun@hallboothsmith.com

Michael C. Tackeff
Assistant United States Attorney
U.S. ATTORNEY'S OFFICE
Middle District of Tennessee
719 Church Street, Suite 3300
Nashville, TN 37203
Telephone: (615) 736-2093
Michael.tackeff@usdoj.gov

Jay S. Bowen
Lauren E. Kilgore
Jacob T. Clabo
SHACKELFORD BOWEN
MCKINLEY & NORTON LLP
1 Music Circle South, Suite 300
Nashville, TN 37203
Telephone: (615) 329-4440
jbowen@shackelford.law
lkilgore@shackelford.law
jclabo@shackelford.law

/s/ Jay S. Bowen

JAY S. BOWEN